

**Christopher P. Wossilek**  
**10687 Addison Ct**  
**Highlands Ranch, CO 80126**  
**303-330-9942**  
**cwoss@protonmail.com**

**UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK**

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| <b>Christopher P. Wossilek, Phillip Wossilek</b> | } | <b>Case No.: 08-13555 (SCC)</b> |
| <b>vs.</b>                                       |   | <b>(Jointly Administered)</b>   |
| <b>Lehman Brothers Holdings INC., et al,</b>     |   |                                 |
| <b>Debtors.</b>                                  |   |                                 |

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**MOTION TO COMPEL FILING OF THE IMPORTANT COVENANTS OF LBH  
ANNUAL CERTIFICATES**

**TO THE HONORABLE SHELLEY C CHAPMAN**  
**UNITED STATES BANKRUPTCY JUDGE:**

Christopher P. Wossilek and Phillip Wossilek, also referred as the “Plaintiffs”, as Pro Se, states and request the honorable court to Compel Lehman Brothers Holding Inc to file the current and all the missed annual filings of the Important Covenants of LBH Certificates, as required by the Lehman Brothers Holdings Inc. Capital Trusts III, IV, V and VI Prospectus terms and enforced by Bankruptcy Code 510(A).

**Background**

The Important Covenants of LBH’s Certificates annual filing requirement were established to ensure that LBHI is in compliance with the terms of the Important Covenants of LBH during a default. The current Chapter 11 Bankruptcy case # 08-13555 set off the default. The Important Covenants of LBH were written into the “Guarantee” terms within the Prospectus of the Lehman

Brothers Holdings Inc. Capital Trusts III, IV, V and VI in order to protect the rights of the subordinated debt that are currently in Class 10B. The Important Covenants of LBH Certificates are not current and have never been file.

The Guarantee was never terminated because the Lehman Brothers Holding Inc. Capital Trusts III, IV, V and VI never received the proper compensation to terminate the “Guarantee” under the terms of the Prospectus as safeguarded and enforceable by Bankruptcy code 510(A).

#### Standing

The Plaintiffs are preferred shareholders of the Lehman Brothers Holdings Capital Trusts III, IV, V and VI. Shareholders have contacted the Trustee in regard to enforcing the “Guarantee” and all the provisions of the “Guarantee” which includes the Important Covenants of LBH, the Dividend Stopper and the Non-Dischargeable clause of the Guarantee. The Trustee failed to act on enforcing the guarantee to date. The Plaintiffs have the right to demand LBHI to be in compliance with filing of the Important Covenants of LBH Certificate(s) under the “Guarantee” which is enforceable within or outside of this bankruptcy as reinforced by Bankruptcy Code 510(A).

“If the guarantee trustee fails to enforce the guarantee trustee’s rights under the guarantee, any holder of related preferred securities may directly sue Lehman Brothers Holdings to enforce the guarantee trustee’s rights under the guarantee without first suing the trust, the guarantee trustee or any other person or entity.” (Exhibit A)

#### Jurisdiction

The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and Article XIV, Section

14.1(h) of the Plan. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. §§ 157(b). The statutory bases for the relief requested in this motion are sections 105(a) and 1141 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”).

### Argument

1. Lehman Brothers Holdings Inc. failed to file the Important Covenants of LBH’s annual Certificates for Lehman Brothers Holdings Inc. Capital Trusts III, IV, V and VI as required by the terms in each Lehman Brothers Holdings Inc. Capital Trusts III, IV, V and VI Prospectus, Bankruptcy Code 510(A) and pursuant to section 13.10 of the Modified Third Amended Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors “The Plan” and sections 105(a), 502(c) and 1142(b) of title 11 of the United States Code (the “Bankruptcy Code”).
2. Lehman Brothers Holdings Inc and the Plan Administrator are aware of the existence of the Guarantee and chose not to comply with the terms of the Important Covenants of LBH and the Dividend Stopper since at least March 2019 when ECF #59614 was filed. At least ten Important Covenants Certifications by LBH should have been filed since LBHI defaulted but, NONE were filed.
3. Joseph Waske has brought forth the issue of the Important Covenants of LBH on ECF # 60448, 60484 and 60337. There was a hearing (ECF #60498) with the Bankruptcy Court on June 3<sup>rd</sup>, 2020 in which the Important Covenants of LBH were discussed. The Plan Administrator stated that he was not aware of the Covenant(s).

4. The Important Covenants of LBH Certificates need to be filed to ensure that the rights of the subordinated debt, as stated in the Important Covenants of LBH, do not get violated. LBHI needs to ensure that the terms under the Important Covenants of LBH are still in good standing and have not been violated since the default. (Exhibit B)

**“Important Covenants Of Lehman Brothers Holdings**

In the guarantee, Lehman Brothers Holdings will covenant that, so long as any trust securities remain outstanding, if:

- there shall have occurred any event of default under the indenture,
- Lehman Brothers Holdings shall be in default with respect to its payment of any obligations under the guarantee, or
- Lehman Brothers Holdings shall have given notice of its election to defer interest payments and shall not have rescinded such notice, and while such interest is deferred,

then Lehman Brothers Holdings will not, and will not permit any subsidiary to:

- declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of Lehman Brothers Holdings' capital stock, or
- make any payment of principal, interest or premium, if any, on or repay, repurchase or redeem any debt securities of Lehman Brothers Holdings that rank on a parity with or junior in interest to the junior subordinated debt securities or make any guarantee payments with respect to any guarantee by Lehman Brothers Holdings of the debt securities of any subsidiary of Lehman Brothers Holdings if such guarantee ranks on a parity with or junior in interest to such junior subordinated debt securities, other than
- dividends or distributions in common stock of Lehman Brothers Holdings,
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payments under the guarantee made by Lehman Brothers Holdings in respect of the trust securities of the trust,

- any declaration of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, and
- purchases of common stock related to the issuance of common stock or rights under any of Lehman Brothers Holdings' benefit plans.

### **Events of Default**

An event of default under the guarantee will occur upon the failure of Lehman Brothers Holdings to perform any of its payment or other obligations required by the guarantee. The holders of a majority in aggregate liquidation amount of the preferred securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the guarantee trustee in respect of the guarantee or to direct the exercise of any trust or power conferred upon the guarantee trustee under the guarantee.

Within 90 days after a default under the guarantee actually known to the trustee, the trustee will notify the holders by first-class mail of the default unless the default has been cured prior to sending

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notice. The trustee may withhold a notice of default under the guarantee if the trustee determines in good faith that withholding the notice is in the interests of the holders of the preferred securities.

**If the guarantee trustee fails to enforce the guarantee trustee's rights under the guarantee, any holder of related preferred securities may directly sue Lehman Brothers Holdings to enforce the guarantee trustee's rights under the guarantee without first suing the trust, the guarantee trustee or any other person or entity.**

**Lehman Brothers Holdings, as guarantor, will be required to file annually with the guarantee trustee a certificate as to whether or not Lehman Brothers Holdings is in compliance with all the conditions and covenants applicable to it under the guarantee."**

5. LBHI needs to confirm that the Dividend Stopper is not violated or that it will not be violated during the bankruptcy procedure as per Bankruptcy Code 510(A) and that LBHI will not issue any new shares without the proper compensation as stated in the Prospectuses of the Lehman Brothers Holdings Inc. Capital Trusts III, IV, V and VI.
6. “The Guarantee will not be discharged except by payment of the Guarantee payments in full to the extent not paid by the trust or upon distribution of the junior subordinate debt securities to the holders of the preferred securities in exchange for all such preferred securities.” (Exhibit C)
  - a. “The Guarantee will constitute a guarantee of payment and not of collection (that is, the guaranteed party may institute a legal proceeding directly against Lehman Brothers Holdings to enforce its rights under the guarantee without first instituting a legal proceeding against any other person or entity). The guarantee will not be discharged except by payment of the guarantee payments in full to the extent not paid by the trust or upon distribution of the junior subordinate debt securities to the holders of the preferred securities in exchange for all such preferred securities.” (Pg.21 of each Prospectus and ECF #60542 pg. 62)
  - b. “The guarantee will terminate as to the preferred securities upon full payment of the redemption price of all preferred securities, upon distribution of the junior subordinated debt securities to the holders of the preferred securities or upon full payment of the amounts payable upon liquidation of the trust. The guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any holder of preferred securities must restore payment of any sums paid under

the preferred securities or the guarantee.” (Pg.21 of each Prospectus and ECF  
#60542 pg. 62)

7. For the reason that LBHI filed ECF 60706, LBIE now have a surplus of up to 7 Billion  
Euro that will be distributed to the Lehman Group. (ECF 60706 Exhibit A pg. 13)

“Lehman Brothers Holdings Inc (**LBHI**) is the ultimate parent company of the Lehman Group. In September 2008, it began Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court and emerged from those proceedings in March 2012.

3LBHI has many subsidiary companies, themselves having subsidiaries. For the purposes of these proceedings, there are three relevant corporate “chains”, each with LBHI as the starting point (when viewing the chain from the top down):

(1) *The LBIE “chain”*. One of LBHI’s subsidiaries is Lehman Brothers International (Europe) (**LBIE**), which is an unlimited company. LBIE was the Lehman Group’s main trading company in Europe. Its share capital consists of a number of ordinary shares, as well as a number of redeemable shares. All of these shares are held by LB Holdings Intermediate 2 Ltd (**LBHI2**), whose sole function was to act as LBIE’s immediate holding company.<sup>2</sup> Above LBHI2 in this corporate “chain” are:

- (a) LB Holdings Intermediate 1 Ltd (**LBHI1**); and
- (b) Lehman Brothers Holdings plc (**PLC**).

(2) *The SLP3 “chain”*. Another of LBHI’s subsidiaries is Lehman Brothers Holdings Scottish LP3, owned indirectly by LBHI via Lehman Brothers UK Holdings (Delaware) Inc and Lehman Brothers Holdings Scottish LP2. I shall refer to Lehman Brothers Holdings Scottish LP3 as **SLP3**. It will be unnecessary to refer to the other companies in the chain.

(3) *The GP1 “chain”*. LB GP No 1 Ltd (**GP1**) is the general partner of a number of **Partnerships**. Another company within the Lehman Group, a sister company of GP1, LB Investment Holdings Ltd (**LBI**), is the preferential limited partner in the Partnerships. The other limited partner in each of the Partnerships was Chase Nominees Limited (the **Initial Limited Partner**). Other persons having an “interest” in GP1 included Deutsche Bank AG (London Branch) (**Deutsche Bank**).<sup>3</sup> Deutsche Bank is not, I stress, a part of the Lehman Group, but a third party. Deutsche Bank – amongst others – is the holder (through its account with

<sup>1</sup> The first annex to this Judgment (**Annex 1**) contains a list of the **bolded** terms and abbreviations used in this Judgment, as well as the paragraph number in the Judgment where that term or abbreviation is first used.

2 One ordinary share was previously held by Lehman Brothers Ltd, which was the service company for the Lehman

Group's operations in the United Kingdom, Europe and the Middle East.

3 The details do not matter for present purposes. Although it appears that it may have been intended that Deutsche

Bank be a partner in GP1 (a point on which I make no findings), Deutsche Bank's actual interest is more indirect,

in that Deutsche Bank's interest is held in dematerialised form as described.

**Approved judgment Lehman Brothers Holdings plc (in administration) and others  
Mr Justice Marcus Smith**

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Euroclear) of ECAPS, which are preferred securities issued by the Partnerships and which constitute limited interests in the Partnerships represented by the Initial Limited Partner. The Partnerships used the proceeds of the sale of the ECAPS to subscribe for notes issued by PLC, and which form part of PLC's subordinated debt. It is through the ECAPS it holds that Deutsche Bank derives its interest in these proceedings....."

8. LBIE, PLC and LBHI2 will be making distribution to subordinated debts relating to LBHI. For this reason, LBHI needs to transparently file the Important Covenants of LBH Certificates to protect the rights of Lehman Brothers Holdings Inc. Capital Trusts III, IV, V and VI granted within the Important Covenants of LBH. Those rights are stated on each of the Prospectuses under the "Guarantee" and all subordinated guarantees like the ones within LBHI Capital Trusts III, IV, V and VI are protected and enforceable within and outside of bankruptcy as stated on Bankruptcy Code 510(A).
9. LBHI should not be allowed to receive a distribution(s) resulting from the UK Litigations (ECF 60706) without being first required to file the Important Covenants of LBH Certificates for the Lehman Brothers Holdings Inc. Capital Trusts III, IV, V and VI.
10. LBHI should not be allowed to make a distribution(s) resulting from funds received by the UK Litigations (ECF 60706) to any of its creditors without being first required to file



the Important Covenants of LBH Certificates for the Lehman Brothers Holdings Inc. Capital Trusts III, IV, V and VI.

11. LBHI needs to assure the Bankruptcy court that there are not any subordinated debts that will be paid out as a result of the UK Litigation or was paid out by LBHI or its subsidiaries because of their failure to file the Important Covenants of LBH Certificate(s) upon default. The missing certificates are a requirement and not an option that is protected under Bankruptcy Code 510(A).

12. ECAPS's Subordinated Debt have seen a distribution. The ECAPS' subordinated debts are also Guaranteed by LBHI. That violated the Important Covenants of LBH and thereby there needs to be assurances that the Important Covenants of LBH are not being violated by requiring LBHI to file the annual Important Covenants of LBH Certificates. LBHI and the Plan Administrator are aware of the "Guarantee" since at least March 2019, if not earlier. The ECAPS' distribution occurred on October 2020.

#### Conclusion

13. The Important Covenants of LBH are included within the "Guarantee" terms to protect the interest of the subordinated debts of Lehman Brothers Holdings Inc. Capital Trusts III, IV, V and VI. The mandatory annual filing requirements of the Certificates upon a default by LBHI is a means for the Lehman Brothers Holdings Inc. Capital Trusts III, IV, V and VI to guarantee that the "Covenants" are not violated. There are no other viable means to guarantee that the "Covenants" are not violated as communications were sent to

LBHI and the Plan Administrator (ECF # 60976) to inquire and make sure that the Important Covenants of LBHI are not violated. LBHI and the Plan Administrator did not respond. There needs to be transparency and assurances that the Important Covenants of LBHI are not being violated by LBHI.

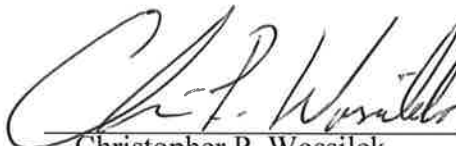
Reservations of Rights

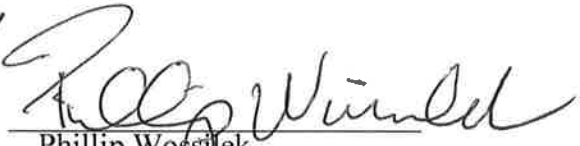
14. The Plaintiffs reserve all their rights that they are entitled to.

WHEREFORE, subject to the conditions set forth herein, Rex Wu respectfully request that the Court enforce the Important Covenants of LBH by requiring LBHI to file Certificates for each of the years since the default for Lehman Brothers Holdings Inc. Capital Trusts III, IV, V and VI.

Respectfully Submitted,

Dated this 27th day of January, 2021

  
Christopher P. Wossilek  
10687 Addison Ct  
Highlands Ranch, CO 80126

  
Phillip Wossilek  
6833 South Harvest Ct  
Aurora, CO 80016

**EXHIBIT A**

**LBHI Capital Trust III Prospectus**

<https://www.sec.gov/Archives/edgar/data/1053521/000104746903008715/a2105395z424b2.htm>

**LBHI Capital Trust IV Prospectus**

<https://www.sec.gov/Archives/edgar/data/1083328/000104746903033240/a2119989z424b2.htm>

**LBHI Capital Trust V Prospectus**

<https://www.sec.gov/Archives/edgar/data/806085/000104746904010912/a2132819z424b2.htm>

**LBHI Capital Trust VI Prospectus**

<https://www.sec.gov/Archives/edgar/data/806085/000104746905000357/a2149684z424b2.htm>

“If the guarantee trustee fails to enforce the guarantee trustee’s rights under the guarantee, any holder of related preferred securities may directly sue Lehman Brothers Holdings to enforce the guarantee trustee’s rights under the guarantee without first suing the trust, the guarantee trustee or any other person or entity.” (Pg.22 of each Prospectus and ECF #60542 pg. 62)

**EXHIBIT B**

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(Pg.22 of each Prospectus and ECF #60542 pg. 61-62)

**"Important Covenants Of Lehman Brothers Holdings**

In the guarantee, Lehman Brothers Holdings will covenant that, so long as any trust securities remain outstanding, if:

- there shall have occurred any event of default under the indenture,
- Lehman Brothers Holdings shall be in default with respect to its payment of any obligations under the guarantee, or
- Lehman Brothers Holdings shall have given notice of its election to defer interest payments and shall not have rescinded such notice, and while such interest is deferred,

then Lehman Brothers Holdings will not, and will not permit any subsidiary to:

- declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of Lehman Brothers Holdings' capital stock, or
- make any payment of principal, interest or premium, if any, on or repay, repurchase or redeem any debt securities of Lehman Brothers Holdings that rank on a parity with or junior in interest to the junior subordinated debt securities or make any guarantee payments with respect to any guarantee by Lehman Brothers Holdings of the debt securities of any subsidiary of Lehman Brothers Holdings if such guarantee ranks on a parity with or junior in interest to such junior subordinated debt securities, other than
- dividends or distributions in common stock of Lehman Brothers Holdings,

- payments under the guarantee made by Lehman Brothers Holdings in respect of the trust securities of the trust,
- any declaration of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, and
- purchases of common stock related to the issuance of common stock or rights under any of Lehman Brothers Holdings' benefit plans.

#### **Events of Default**

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Within 90 days after a default under the guarantee actually known to the trustee, the trustee will notify the holders by first-class mail of the default unless the default has been cured prior to sending

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notice. The trustee may withhold a notice of default under the guarantee if the trustee determines in good faith that withholding the notice is in the interests of the holders of the preferred securities.

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**Lehman Brothers Holdings, as guarantor, will be required to file annually with the guarantee trustee a certificate as to whether or not Lehman Brothers Holdings is in compliance with all the conditions and covenants applicable to it under the guarantee."**

**EXHIBIT C**

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- “The guarantee will terminate as to the preferred securities upon full payment of the redemption price of all preferred securities, upon distribution of the junior subordinated debt securities to the holders of the preferred securities or upon full payment of the amounts payable upon liquidation of the trust. The guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any holder of preferred securities must restore payment of any sums paid under the preferred securities or the guarantee.” (Pg.21 of each Prospectus and ECF #60542 pg. 62)